

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,	Case No. 13-CR-00004-J
Plaintiff,	Cheyenne, Wyoming
vs.	July 26, 2013
	2:23 p.m.
JACQUELINE GARCIA,	
Defendant.	CERTIFIED COPY

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MR. STUART S. HEALY III
Assistant United States Attorney
UNITED STATES ATTORNEY'S OFFICE
P.O. Box 668
Cheyenne, WY 82003-0668

For the Defendant: MR. THOMAS A. FLEENER
Attorney at Law
FLEENER & VANG LLC
119 Grand Avenue
P.O. Box 913
Laramie, WY 82073-0913

Court Reporter: JULIE H. THOMAS, RMR, CRR
2120 Capitol Avenue, Room 2228
Cheyenne, WY 82001
(307)778-0078 CA CSR No. 9162

Proceedings recorded by mechanical stenography,
transcript produced by computer.

13-CR-00004-J

Sentencing

07/26/2013 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

JUDGMENT AND SENTENCE

PAGE

Argument by Mr. Fleener	9
Allocution of the Defendant	11
Judgment and Sentence of the Court	13

13-CR-00004-J

Sentencing

07/26/2013

3

1 (Proceedings commenced 2:23 p.m.,
2 July 26, 2013.)

3 THE COURT: Thank you. Please be seated.
4 Thank you.

5 MR. HEALY: Good afternoon, Your Honor. We're here
6 today in the matter of sentencing in the United States of
7 America versus Jacqueline M. Garcia, Docket No. 13-CR-04-01J.
8 The defendant was indicted on January 15th, 2013. She made
9 her initial appearance and was arraigned on January 23rd. She
10 proceeded to jury trial standing on her not guilty plea on
11 May 8th, 2013, and a jury returned guilty verdicts on both
12 counts of the Indictment, which include Count 1, conspiracy to
13 possess with intent to distribute methamphetamine, and
14 Count 2, possession of a firearm in furtherance of a drug
15 felony.

16 The presentence report was prepared on June 14th,
17 2013. The Government filed a response letter that really
18 contained no objections per se. Mr. Fleener has recently
19 filed a sentencing memorandum where he apparently joins in
20 Mr. Molina's objections to the level 36. The computation of
21 drug quantity by the Probation Office is found on pages 9 and
22 10 of the PSR. Paragraph 24 sets out a base offense level of
23 36. I don't have an agent to testify today, Your Honor,
24 because I think that a level 34 is probably appropriate based
25 on the testimony. I think that some of the materials that

13-CR-00004-J

Sentencing

07/26/2013

4

1 Probation received would -- do support the finding of a 36,
2 but the Government would prefer to stand on the testimony of
3 the witnesses, and the Court is familiar with that testimony.
4 So I believe a base offense level of 34 is appropriate, which
5 would lead to a total offense level of 34 in paragraph 32.

6 The criminal history is set out on page 11. The
7 criminal history is a Criminal History Category of I.

8 On page 16 the probation officer notes that, in
9 paragraph 60, if the Court agrees with the Government and the
10 defendant that an offense level of 34 and a Criminal History
11 Category of I, the guideline imprisonment range is 151 to 188
12 months. Count 2 is a mandatory 60 months consecutive.

13 Paragraph 62 indicates that supervised release of not
14 more than five years is mandatory on Count 1. It's actually
15 not less than five years, but the Government believes that a
16 supervised release of five years is appropriate in this case.

17 The Government agrees with the special conditions of
18 supervised release found in paragraph 65. A \$200 special
19 assessment is necessary, and a fine of some kind would
20 probably be appropriate in this case and even beneficial to
21 the defendant in light of her incarceration.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Healy.

24 I, too, was impressed with and appreciated the effort
25 of Mr. Fleener's coadjutor, Mr. Jubin, to refresh the Judge's

13-CR-00004-J

Sentencing

07/26/2013

5

1 memory as to testimony that occurred at trial when considering
2 the issue of drug quantity. And even then it's a pretty loose
3 calculation. Could be either one or more in that the
4 involvement with methamphetamine predated certainly the
5 conspiracy in this matter, and we don't have testimony in that
6 regard.

7 I have, in addition to the presentence investigation
8 report in this matter, the prosecutor's statement that has
9 been provided in this case, the memorandum of sentencing from
10 Mr. Fleener, the attachment thereto of various letters: a
11 letter from Jenna Muniz, a friend who met through children; a
12 letter from Lacey Jay Cole, a six-year friend of both Jackie
13 and Sigi; a letter from Angela Garcia also signed by Wendy
14 Molina; a letter from Dawn Withhorn; a longer letter from
15 Wendy Molina dated July 9th, 2013; a lengthy letter from Shane
16 Draper. Are all matters that the Court has read, and they
17 were all positive letters concerning really both, both
18 defendants. And it has been unusual in consideration of this
19 case that, in terms of a number of individuals, they have very
20 favorable and close friendships with Miss Garcia and
21 Mr. Molina that have developed through the years. I do recall
22 the testimony of and the meetings that we've had with
23 Miss Blankenship who struggled greatly with her loyalty to
24 Mr. Molina and Miss Garcia, obviously, although her life in
25 this regard was another story, but certainly there was no

13-CR-00004-J

Sentencing

07/26/2013

6

1 doubting the sincerity of her, her feelings towards the
2 couple.

3 Very well, if the defendant will come forward and
4 raise her right hand and be sworn.

5 COURTROOM DEPUTY: Please raise your right hand as
6 best you can.

7 (The defendant was sworn.)

8 COURTROOM DEPUTY: Thank you.

9 THE COURT: Please state your full name.

10 THE DEFENDANT: Jacqueline Marie Garcia.

11 THE COURT: Are you under the influence of any drug,
12 alcohol, pill, or medication today?

13 THE DEFENDANT: No. No, sir.

14 THE COURT: Are you taking any pills at all?

15 THE DEFENDANT: Just high blood pressure pills.

16 THE COURT: All right. Is there anything, any reason
17 you know why you cannot participate in this proceedings today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Your health's okay?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: But you do have high blood pressure?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Through Mr. Fleener have you
24 received a copy of the presentence investigation report?

25 THE DEFENDANT: Yes, sir.

13-CR-00004-J

Sentencing

07/26/2013

7

1 THE COURT: Have you had a chance to read it and
2 discuss it with him?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you feel you understand it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I think Mr. Healy has accurately summed
7 up the report. In terms of the calculation of the sentence
8 guideline in this matter and the criminal history, that is,
9 the offense level and the criminal history, I agree with
10 Mr. Healy, and I agree with you, the argument you are making,
11 Mr. Fleener.

12 MR. FLEENER: Yes, Judge.

13 THE COURT: Based upon the testimony received at
14 trial, this case would fall within a base offense level of 34.

15 MR. FLEENER: Yes, sir.

16 THE COURT: And that would be the total offense level
17 in this case.

18 There was a theft charge, paragraph 36, and some
19 driving under the influence of alcohol dating back to 1990 and
20 1992. Those charges were not counted. The theft occurred in
21 2001 and is counted as one point. However, that leaves her,
22 Miss Garcia, in a most favorable Criminal History Category of
23 I in calculating the sentence in this case. And I would note
24 that a person at level 34, Criminal History Category I, would
25 be in a sentencing range of 51 to 188 months.

13-CR-00004-J

Sentencing

07/26/2013

8

1 THE REPORTER: Your Honor, 51?

2 THE COURT: 151 to 188 months. I find that is the
3 appropriate calculation in this matter.

4 Count 2, the 924(c)(1)(A) charge, requires a
5 mandatory sentence of 60 months of imprisonment to be imposed
6 consecutively to whatever sentence is imposed on Count 1.

7 The recommendation in this case that we've received
8 from Mr. Fitzgerald, who I don't think was intending to be
9 presumptuous in this matter, suggested that given the minimum
10 mandatory sentence on Count 1 and the minimum mandatory
11 sentence on Count 2, that both of those -- that a departure or
12 a variance should occur to achieve a sentence at those minimum
13 mandatory terms as sufficient but not greater than necessary
14 to achieve the purposes of sentencing under federal law which
15 consider the defendant, her involvement -- and we do note that
16 she has a clean criminal history essentially; she was in every
17 sense, it seems to me, a partner of Mr. Molina in the activity
18 that went on in the household -- to not depreciate the
19 seriousness of the offense, to incapacitate her from
20 committing similar offenses in the future, and to consider
21 also in the sentence possible treatment that may be of benefit
22 at some future time for her. I would say that, in any event,
23 the sentence here is a removal sentence, whether we look at it
24 from the standpoint of the guideline or the minimum
25 mandatorys that are involved in this matter.

13-CR-00004-J

Sentencing

07/26/2013

9

1 Mr. Fleener, I'd be pleased to hear from you or to
2 hear from your client.

3 MR. FLEENER: Thank you, Judge. And so the Court, so
4 the Court knows, I join Mr. Jubin's objections to
5 sentence -- or to drug quantity. Rather than filing my own --
6 stealing his words and filing my own form, I just joined his
7 objections. I figured it would save the taxpayers money, and
8 I knew that the Court was, was -- while sentencing is an
9 individual act, they were -- they've been partners for 20
10 years and that what applied to Sigi generally applied to
11 Jackie as well.

12 A couple things I would like to, like to bring up,
13 Judge. First, we'd like a strong recommendation by the Court
14 not only for residential drug treatment, which is appropriate
15 in this case. She may not get the benefit for it as far as
16 reducing her sentence, but she certainly needs, needs RDAP.
17 She's had issues with substance abuse throughout her life and
18 would only benefit from residential treatment.

19 We'd also ask that the Court make a recommendation
20 that she be housed in Waseca, Minnesota. Her family -- my
21 perusing the BOP's websites and understanding of how
22 placements are conducted, a lot of folks -- a lot of women
23 that come out of Wyoming are either getting assigned into
24 Phoenix or out west into California, because apparently
25 Wyoming falls under the western branch, but I would note for

13-CR-00004-J

Sentencing

07/26/2013

10

1 the record and I would ask that the Court consider the fact
2 that all of Jackie's family essentially lives in eastern
3 Nebraska, and a placement in Waseca would put them within four
4 and a half, five hours away, which is, of course, much closer
5 than Arizona or out in California. So we would ask for
6 Waseca, Minnesota, to be where she is placed.

7 I appreciate Mr. Healy's comments to the PSI. I
8 appreciate Mr. Fitzgerald's work in the PSI and his
9 recommendations as well. Would also argue that a 15-year
10 sentence is -- 180 months is certainly sufficient in this case
11 to settle the -- or satisfy all the requirements under Section
12 3553(a) and is a very, very long sentence. Because Ms. Garcia
13 will be appealing the conviction, appealing the jury trial, I
14 have advised her to essentially remain silent at this point.
15 However, she does want to express to the Court and to her
16 family that she's sorry and is ready to get to the next
17 chapter of her life, whatever that may -- however that may
18 look.

19 The last few months, I'd also point out, and I don't
20 blame the Marshals Service for that because they're certainly
21 most accommodating on almost everything else, but after the
22 trial was conducted she -- she and Sigi had been housed
23 together in Scotts Bluff for six months, five months. Once
24 the trial was conducted, she was moved to Scotts Bluff -- or,
25 excuse me, to Torrington because I think the Marshal

13-CR-00004-J

Sentencing

07/26/2013

11

1 made -- well, I spoke with the Marshal about it. You know,
2 the Marshal made a determination that it would be best to not
3 have Ms. Blankenship and some of the others in Scotts Bluff
4 who had testified against Ms. Garcia. What the result of that
5 was, though, was that she was away from Sigi in Torrington for
6 the last two months. And I tried dozens of times to get, to
7 get Marshal Moore to relent and move her back to Scotts Bluff,
8 and he chose not to do so. I'm hopeful that he does so now
9 because I believe Ms. Blankenship has moved off, and it would
10 be nice for Jackie and Sigi to at least say goodbye. They've
11 been together for 20 years. So that's been a hardship on
12 Ms. Garcia, her family. The visiting days in Torrington were
13 different than the visiting days in Scotts Bluff, so when
14 family came to visit, they ended up visiting Scotts Bluff and
15 not being able to visit in Torrington. So she did face some
16 personal hardship, which is something I would ask the Court to
17 consider.

18 So all in all, Judge, with a recommendation for
19 Waseca, Minnesota, and residential drug treatment, Ms. Garcia
20 will remain silent, but we would argue that 180 months is
21 appropriate on both counts. Thank you, Judge.

22 THE COURT: Miss Garcia, I'm certainly willing to
23 hear any argument or anything you wish to say before the Court
24 determines what your sentence will be.

25 THE DEFENDANT: I'm sorry for all of this. And I

13-CR-00004-J

Sentencing

07/26/2013

12

1 think drug treatment would be all right for me.

2 THE COURT: All right. There may be some things that
3 I'll say now that I really don't have a strong basis for, and
4 I don't object if you disagree with me. I'm just taking a
5 look at some of the underlying facts of this case.

6 You are 47 years old, and you're appearing for
7 sentencing in connection with your first felony offense, and
8 this is your second countable criminal offense, offenses. It
9 is surprising that you find yourself, for many reasons,
10 standing before this Court after a jury decision that's found
11 you guilty of violations alleged in Counts 1 and 2 of the
12 Indictment in this matter, but it appears that you may have,
13 dabbling in controlled substances and methamphetamine,
14 certainly slid into something much greater in terms of your
15 own use of it, if nothing else, following the loss of your
16 daughter at age 15, together with some -- with antisocial
17 thinking and behavior certainly with regard to violation of
18 the drug laws of the United States. To the extent -- it is
19 understandable that you are not the first person to medicate
20 or self-medicate very difficult emotions, emotions that
21 persist after the loss of a loved one. Witness the number of
22 persons who turn to alcohol at those times. But it is quite
23 another to take that to the next step of creating a drug
24 conspiracy and drug dealing and incorporating methamphetamine
25 as part of a lifestyle.

13-CR-00004-J

Sentencing

07/26/2013

13

1 The penalty is very serious here. And I can't help
2 but notice that many of the people who you were associating
3 with in this conspiracy were young people from Gillette,
4 Wyoming, and that community. And of course, they, too, felt a
5 loyalty to you and did not find it easy to come here to
6 testify under oath in this proceedings.

7 The sentence in this case, as I mentioned, is one
8 that is heavy. It is dictated largely by Congress, and I say
9 that because the Court will adopt the recommendation that I've
10 received from Probation, but also more than that because I
11 think it is appropriate in this matter and not objected to by
12 the Government that would allow a variance. We look to the
13 fact that you have very little criminal history in your
14 background, and that variance will take you down to offense
15 level 31, which would be a sentence between 108 and 135
16 months. And it is based upon that and a Criminal History
17 Category I that this sentence is imposed.

18 Pursuant to the Sentencing Reform Act of 1984 and the
19 factors enumerated in Title 18 United States Code Section
20 3553(a), it is and will be the judgment and sentence of the
21 Court that the defendant, Jacqueline M. Garcia, is hereby
22 sentenced to a term of 120 months for Count 1, the drug
23 conspiracy, to be followed by a consecutive term of 60 months
24 for Count 2, in custody of the Bureau of Prisons. Both of
25 these are minimum mandatory terms of imprisonment.

13-CR-00004-J

Sentencing

07/26/2013

14

1 Upon your release from imprisonment the defendant
2 shall be placed on supervised release for a term of five years
3 for each count, and those counts then are to be served
4 concurrently and not consecutively. That is, the supervised
5 release will be served concurrently.

6 Within 72 hours of release from custody of the Bureau
7 of Prisons defendant shall report in person to the Probation
8 Office in the District in which she is released or to which
9 she is released. And while on supervised release she shall
10 comply with the mandatory and standard conditions adopted by
11 this Court and shall comply with the following special
12 conditions.

13 The defendant shall participate in and successfully
14 complete substance abuse treatment in a program approved by
15 the United States probation officer, abiding by the rules,
16 requirements, and conditions of the treatment program, and
17 shall not discontinue treatment without permission of the
18 probation officer. It is the intention of the Court that you
19 receive the assistance that you have requested with regard to
20 substance abuse addiction and the situation that it has driven
21 you to in this matter. I fully concur in the decision of the
22 probation officer that a treatment program would be
23 appropriate for you.

24 The defendant shall submit to drug and alcohol
25 testing as directed by the U.S. probation officer and shall

13-CR-00004-J

Sentencing

07/26/2013

15

1 comply with specific copays imposed pursuant to District
2 policy should she fail to comply with drug testing. Here
3 again, testing is a means of providing credibility to a drug
4 treatment program, a means of keeping the Court informed as to
5 the progress that the defendant is making in her quest to
6 remain and lead a sober and drug-free life, and also is an
7 added incentive to her to be drug free.

8 As a component of her treatment and testing program
9 she shall pay a one-time fee of \$250 to partially defray the
10 costs of treatment and drug testing, payments to be made by
11 cashier's check or money order to the Clerk of the District
12 Court here in Cheyenne utilizing the payment coupons provided
13 by the probation department. This condition is waived if she
14 is supervised in a district other than the state of Wyoming or
15 the District of Wyoming.

16 Another special condition is that the defendant shall
17 refrain from any use or possession of alcohol or other
18 intoxicants, including over-the-counter medications used
19 contrary to the recommended dosage or the intentional
20 inhalation of any substance, prescribed or otherwise, without
21 permission of the United States probation officer.
22 Additionally, she shall not enter establishments whose primary
23 income is derived from the sale of alcohol. It makes no sense
24 for her to substitute another addiction for one that's
25 destroyed her life.

13-CR-00004-J

Sentencing

07/26/2013

16

1 THE DEFENDANT: Yeah.

2 THE COURT: And any addiction is going to do that,
3 and she needs to take care of herself at this point. I would
4 say this about drug treatment programs, whether it's AA or NA
5 or residential drug abuse treatment program or another program
6 that may be set up for you. The people who attend those
7 programs are people who have addiction problems, and there are
8 all kinds of people. There are people there who are there
9 just to hook up with somebody who can give them some drugs,
10 and there are also people there who are good people who are
11 trying to sincerely to get straight in their lives. So you
12 have to make decisions as to who's important for you and who
13 you will be safe around, because that addiction is always
14 there. The people you associate with can be triggers for
15 using again, and we want you to succeed and at least to have
16 some life with your children and grandchildren.

17 THE DEFENDANT: Yeah.

18 THE COURT: The defendant shall submit to a
19 reasonable search condition of residence, storage facility,
20 office, or vehicle to a search conducted by the probation
21 officer at a reasonable time in a reasonable manner based upon
22 reasonable suspicion of contraband or evidence of a violation
23 of a condition.

24 The defendant shall participate in a cognitive
25 behavioral treatment regimen, and there are a number of them

13-CR-00004-J

Sentencing

07/26/2013

17

1 that might apply in this case. She shall actively participate
2 in treatment until successfully discharged or until the
3 probation officer has excused her from the treatment regimen.
4 What we hope to accomplish or what I hope to accomplish by
5 ordering a cognitive behavioral treatment regimen is something
6 that I have a sense that Jacqueline Garcia already is aware
7 of, that there is a huge contradiction between what her
8 friends are saying about her in her letter and how her life
9 was being led and how the addiction was taking her life or
10 taking it away from her, and the thinking that allowed that to
11 occur is something that needs to be examined.

12 I find that community restitution is not authorized
13 in this case. I find the defendant does not have the ability
14 to pay a fine within the guideline range but is able to pay a
15 reduced fine of \$800, due immediately, inclusive of penalties
16 and interest if applicable.

17 I might mention in regard to fines. I don't know if
18 Mr. Healy has seen it. The Ninth Circuit Court of Appeals has
19 come out with an opinion recently that they will not have
20 a -- they will not support collection of a fine unless the
21 Court orders a particular schedule for payment of that fine.
22 It's kind of interesting. I will be glad to give that case to
23 whoever might be interested in seeing it. I haven't seen that
24 from any of the correctional institutions located within the
25 Tenth Circuit or elsewhere.

13-CR-00004-J

Sentencing

07/26/2013

18

1 It is ordered the defendant shall pay a special
2 assessment fee in the amount of \$100 per count which shall be
3 due immediately. Payments for monetary obligations shall be
4 made payable by cashier's check or money order to the Clerk of
5 the District Court at 2120 Capitol Avenue, Room 2131. She
6 shall participate in the Inmate Financial Responsibility
7 Program to pay her monetary obligations. She shall pay all
8 financial obligations immediately. Those not paid immediately
9 or through the Inmate Financial Responsibility Program shall
10 be paid commencing 60 days after her release from confinement
11 in monthly payments of at least \$25 or 10 percent of her gross
12 monthly income, whichever is greater. All monetary payments
13 shall be satisfied not less than 60 days prior to the
14 expiration of the five-year term of supervised release.

15 The Court recommends -- here also I want to advise
16 Miss Garcia that the Government has been in contact with the
17 Bureau of Prisons and I believe has asked that there be
18 separation of you and Sigi from others who are involved in the
19 conspiracy. That may have some influence as to where you are
20 ultimately placed. There are a limited number of facilities
21 for women. Waseca is one. I have no objection to
22 recommending Waseca in this matter consistent with your
23 classification by the Bureau of Prisons and by the need to
24 provide adequate separation of offenders. So I would
25 recommend that you, all other things being equal, that you be

13-CR-00004-J

Sentencing

07/26/2013

19

1 allowed to serve your time at Waseca, close to family members
2 in Nebraska.

3 I also strongly recommend, although you may not
4 receive the time benefits -- and in this case it is
5 particularly difficult for me to see why you would not in that
6 I don't have any evidence other than possession of firearms
7 and access to firearms at your home in and around controlled
8 substances that they were waved at anybody or used to collect
9 money or discharged or anything of that nature by you.

10 Nevertheless, I think the Bureau of Prisons, rightly or
11 wrongly, imposes their own requirements. I strongly recommend
12 that you be allowed to participate in the Residential Drug
13 Abuse Program, which I think gets you ready to come out,
14 not -- you're not going to be ready to come out. You will be
15 away for a long time, and so you're going to need to do
16 everything you can to prepare yourself and to -- need a
17 tremendous amount of strength to return and stay sober and to
18 reconnect with your family and children.

19 I want to advise you that you have not waived your
20 right to appeal as a condition of your Plea Agreement. I want
21 to inform you that you have 14 days from the date of entry of
22 judgment within which you need to file a notice of appeal if
23 that is your desire. You should consult with your attorney
24 about any thoughts that you might have as to whether or not
25 you wish to proceed to file an appeal. However, if you fail

13-CR-00004-J

Sentencing

07/26/2013

20

1 to file the notice within 14 days, you may, in fact, lose your
2 right to appeal. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions that you'd like
5 to ask about the judgment and sentence of the Court?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. We really want you to come
8 out and be healthy and take care of yourself.

9 Anything further, Mr. Healy?

10 MR. HEALY: No, Your Honor. Thank you.

11 THE COURT: Thank you.

12 MR. FLEENER: No, sir.

13 THE COURT: I'll stay here until the Marshal comes
14 back with the next defendant.

15 (Proceedings concluded 2:59 p.m.,
16 July 26, 2013.)

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, JULIE H. THOMAS, Official Court Reporter for the
United States District Court for the District of Wyoming, a
Registered Merit Reporter and Certified Realtime Reporter, do
hereby certify that I reported by machine shorthand the
proceedings contained herein on the aforementioned subject on
the date herein set forth, and that the foregoing pages
constitute a full, true and correct transcript.

Dated this 27th day of September, 2013.

/s/ Julie H. Thomas

JULIE H. THOMAS
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter
CA CSR No. 9162